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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 MARVIN LOUIS LOWERY,) Case No. CV 18-9644-R (JPR)
11 Plaintiff,)
12 v.) ORDER DISMISSING ACTION FOR
13 CITY OF LOS ANGELES et) FAILURE TO PROSECUTE
14 al.,)
Defendants.)

15 On November 15, 2018, Plaintiff filed this civil-rights
16 action pro se. The Magistrate Judge twice dismissed the
17 complaint with leave to amend, and Plaintiff filed an amended
18 complaint each time. On April 8, 2019, the Magistrate Judge
19 issued a Report and Recommendation, recommending that the lawsuit
20 be dismissed for failure to state a claim. That R. & R. was
21 returned to the Court as undeliverable, however, along with two
22 other pieces of mail sent to Plaintiff. Each time the returned
23 envelope stated that Petitioner was no longer at the address and
24 that the post office was "unable to forward." Plaintiff has not
25 filed a change of address with the Court, nor has he communicated
26 with it in any way since the beginning of March.

27 Local Rule 41-6 provides that

28 [a] party proceeding pro se shall keep the Court . . .

1 apprised of such party's current address If
2 mail directed by the Clerk to a pro se plaintiff's
3 address of record is returned undelivered by the Postal
4 Service, and if, within fifteen (15) days of the
5 service date, such plaintiff fails to notify, in
6 writing, the Court and opposing parties of said
7 plaintiff's current address, the Court may dismiss the
8 action with or without prejudice for want of
9 prosecution.

10 Carey v. King, 856 F.2d 1439, 1441 (9th Cir. 1988) (per
11 curiam), examined when it is appropriate to dismiss a plaintiff's
12 lawsuit for failure to prosecute. See also Link v. Wabash R.R.
13 Co., 370 U.S. 626, 629-30 (1962) ("The power to invoke
14 [dismissal] is necessary in order to prevent undue delays in the
15 disposition of pending cases and to avoid congestion in the
16 calendars of the District Courts.").

17 In deciding whether to dismiss a lawsuit for failure to
18 prosecute, a court must consider "(1) the public's interest in
19 expeditious resolution of litigation; (2) the court's need to
20 manage its docket; (3) the risk of prejudice to the defendants;
21 (4) the public policy favoring disposition of cases on their
22 merits[;] and (5) the availability of less drastic sanctions."
23 Carey, 856 F.2d at 1440 (citation omitted). Unreasonable delay
24 creates a rebuttable presumption of prejudice to the defendants
25 that can be overcome only with an affirmative showing of just
26 cause by the plaintiff. In re Eisen, 31 F.3d 1447, 1452-53 (9th
27 Cir. 1994).


28 Here, the first, second, third, and fifth Carey factors

1 militate in favor of dismissal. In particular, by failing to
2 inform the Court of his address change, Plaintiff has rendered it
3 unable to communicate with him. He has not rebutted the
4 presumption of prejudice to Defendants, and no less drastic
5 sanction is available. See Scott v. Belmares, 328 F. App'x 538,
6 539 (9th Cir. 2009) (affirming dismissal of civil-rights lawsuit
7 in part because pro se plaintiff failed to keep court apprised of
8 change of address under Local Rule 41-6). Although the fourth
9 Carey factor weighs against dismissal - as it does in every case
10 - together the other factors outweigh the public's interest in
11 disposing of the case on its merits. And because the Magistrate
12 Judge had already issued an R. & R. recommending that the case be
13 dismissed on its merits, dismissal should be with prejudice.

14 It therefore is ORDERED that this action is dismissed with
15 prejudice under the Court's inherent power to achieve the orderly
16 and expeditious disposition of cases and because by moving
17 without notifying the Court Plaintiff has failed to prosecute his
18 lawsuit.

19 LET JUDGMENT BE ENTERED ACCORDINGLY.

20 DATED: May 10, 2019 _____
21 _____

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23 MANUEL REAL
24 U.S. DISTRICT JUDGE

25 Presented by:

26 
27 Jean P. Rosenbluth
28 U.S. Magistrate Judge